

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Marcus Shelander,

Complainant,
vs.

ORDER OF DISMISSAL

Mayor Rick Smisson, Councilperson
Kathy Olson, and Councilperson
Douglas Payne,

Respondents.

On October 26, 2006, Marcus Shelander filed a Complaint with the Office of Administrative Hearings alleging violations of Minn. Stat. §§ 211B.02, 211B.06, and 13D by Respondents. The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on October 26, 2006, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent by United States mail to the Respondents on October 26, 2006.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not state prima facie violations of Minn. Stat. §§ 211B.02 or 211B.06. In addition, under Minn. Stat. § 211B.32, the Administrative Law Judge has no jurisdiction to consider alleged violations of the open meeting law provisions of Minnesota Statutes Chapter 13D. Therefore, Complaint is dismissed.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Marcus Shelander against Mayor Rick Smisson, Councilperson Kathy Olson, and Councilperson Douglas Payne is DISMISSED.

Dated: October 27, 2006

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. §§ 14.63 to 14.69.

MEMORANDUM

Respondent Rick Smisson is the current mayor of the City of Harris and is running for re-election this November. Respondents Doug Payne and Kathy Olson are both running for Harris City Council. The Complaint alleges that the Respondents violated Minn. Stat. §§ 211B.02 and 211B.06 by placing the phrase “Fire Department Endorsed” on their lawn signs. According to the Complaint, there was never a vote by the entire fire department on whether to endorse the Respondents’ candidacies. Instead, the Complaint alleges that the Chief of the Harris Volunteer Fire Department collected only a handful of signatures of the firefighters on a form endorsing the Respondents, and most of these signatures were from “new men” or non-residents of Harris. The Complaint also alleges that some of the signatures were obtained by the Fire Chief through “mild intimidation.” According to the Complainant, a two-thirds unanimous vote of the full department at an open meeting is needed for any endorsement.

Minn. Stat. § 211B.02 provides as follows:

211B.02 False Claim of Support.

A person or candidate may not knowingly make, directly or indirectly, a false claim stating or implying that a candidate or ballot question has the support or endorsement of a major political party or party unit or of an organization. A person or candidate may not state in written campaign material that the candidate or ballot question has the support or endorsement of an individual without first getting written permission from the individual to do so.

The statute prohibits a candidate from knowingly making a false claim that he or she has the endorsement or support of an organization. The Complainant does not deny that the Respondents were given the endorsement of the volunteer fire department. Instead, the Complaint alleges that the Fire Chief did not follow the “standard” endorsement process and obtained signatures for Respondents’ endorsement improperly. Because the Complaint does not allege that the Respondents falsely claimed to have the endorsement of the fire department, it fails to identify a prima facie violation of Minn. Stat. § 211B.02 on the part of the Respondents. This allegation is dismissed.

The Complaint also alleges that the phrase “Fire Department Endorsed” on the Respondents’ lawn signs violated Minn. Stat. § 211B.06. This statute prohibits a person from intentionally preparing or disseminating false campaign material that the person knows is false or communicates to others with reckless

disregard as to whether it is false. Lawn signs are campaign material. However, the Complainant has failed to allege that the statement "Fire Department Endorsed" is false. Again, the Complainant does not deny that the endorsement of the volunteer fire department was given to the Respondents. Instead, the Complaint alleges that the Fire Chief did not follow the proper endorsement process. This allegation is not sufficient to state a prima facie violation of Minn. Stat. § 211B.06. The Complainant has not alleged that the statement is false or that the Respondents knew it was false or communicated it with reckless disregard as to whether it was false. This allegation is dismissed.

Finally, the Complaint alleges a violation of the open meeting laws under Minnesota Statutes Chapter 13D. The Complainant appears to be arguing that Respondents violated the open meeting law by campaigning as a group. Regardless of whether campaigning together would be considered transacting city business within the meaning of the open meeting laws, the campaign complaint process is limited to alleged violations of Minnesota Statutes Chapters 211A and 211B. As such, the Administrative Law Judge has no jurisdiction to consider violations of chapter 13D. Because there is nothing within either Chapter 211A or 211B that prevents candidates from campaigning together, this allegation is dismissed.

S.M.M.